

1 Bloomfield, New Jersey.

2 Q. After graduating from Bloomfield  
3 College, can you describe your work experience  
4 for us?

5 A. After graduating from Bloomfield  
6 College, I worked for Motorola for about eight  
7 and a half years in various finance, service and  
8 sales capacities. After that, I left and joined  
9 a small service organization, which was a  
10 family-run business known as Henry Brothers  
11 Electronics, and the purpose there was to take  
12 that company and move it into a full sales and  
13 service business around the cellular explosion at  
14 that time in the early '80s.

15 That didn't work out for business  
16 reasons and I moved on then to work for a company  
17 which was a joint venture between Lynn  
18 Broadcasting and Multimedia. The name of that  
19 company was officially Cellular Telephone Company  
20 with a dba of Metro One. They were the New York  
21 nonwire-line licensee.

22 A couple of years into that I was  
23 offered an equity opportunity with a firm known  
24 as Metro-Mobile and left Metro-One to become a  
25 director of marketing with Metro-Mobile and then

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1 held various positions within that company, up to  
2 and including vice president of operations for  
3 all of its cellular operations.

4 That company in April of '92 was sold  
5 to Bell Atlantic Corporation in a merger. They  
6 did not retain any of the executives, so I left  
7 that situation and worked for Comcast Cellular in  
8 their middle New Jersey operation known as  
9 Cellular-One of Central New Jersey, as director  
10 of marketing.

11 I also was doing some independent work  
12 in consulting for RSA owners in the development  
13 and implementation of their networks. I later  
14 joined Motorola as a director of worldwide  
15 operations for all of their cellular licenses  
16 around the world.

17 Q. Can you explain for us now what you're  
18 doing for Motorola generally?

19 A. Motorola Network Ventures Division,  
20 which is the division that I work for, owns and  
21 operates in various joint venture arrangements,  
22 some 23 cellular licenses around the world, along  
23 with a number of wired international gateway  
24 licenses as well, and they are spread randomly  
25 across the world from Russia, Pakistan, Israel,

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1 Hong Kong, Latin America, Central America, the  
2 Caribbean.

3 Q. Have you had any experience with  
4 working for entities that either managed cellular  
5 systems or being a consultant for companies that  
6 were managed -- whose systems were managed by  
7 others?

8 A. Yes. In two areas. As the  
9 vice president of operations for Metro-Mobile, I  
10 had day-to-day operating responsibility for all  
11 of our networks, in addition, responsibility for  
12 strategic planning and mergers and acquisitions.

13 In that capacity of strategic planning  
14 and mergers and acquisition, I was involved in  
15 the acquisition of RSAs for Metro-Mobile to fill  
16 out its cluster strategy, as well as the  
17 management of RSAs who are affiliated with us,  
18 either via complete turnkey systems or switch  
19 sharing arrangements.

20 Growing out of that was a relationship,  
21 more of a consulting relationship for a company  
22 called ACTC, Alpha Cellular Telephone Company,  
23 which I believe is a general partnership formed  
24 in Florida. It owned and operated, until  
25 recently, two RSAs in Kentucky, Kentuckys 9 and

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1 10. Those have subsequently been sold.

2 Q. What did you do for ACTC in  
3 relationship to management of their systems?

4 A. For ACTC I consulted with a partnership  
5 on how to direct their management company in the  
6 implementation of the network, the ongoing  
7 day-to-day operations of that network, both from  
8 a financial marketing and engineering  
9 perspective.

10 As we moved through that cycle, we  
11 moved through at least two management firms  
12 leading up to the sale of the partnership, or the  
13 licenses in the partnership, earlier this year in  
14 January of 1995.

15 Q. Have you been retained by the Ellis  
16 Thompson Corporation to testify as an expert in  
17 this proceeding?

18 A. Yes, I have.

19 Q. What have you reviewed in preparation  
20 for your testimony?

21 A. I've reviewed the -- what I will refer  
22 to as the management agreement between Ellis  
23 Thompson and the management entity and the  
24 various amendments attached to it, and various  
25 depositions from Amcell/Comcast people and

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1 depositions of Ellis Thompson and David Lokting  
2 and then had meetings with David and Ellis  
3 Thompson to discuss the matters.

4 Q. Are you generally familiar with the  
5 management arrangement between Amcell, Comcast  
6 and the Ellis Thompson Corporation?

7 A. Yes, I feel I am.

8 Q. Is that a normal type of management  
9 arrangement, based on your experience?

10 A. Given my experience in both  
11 Metro-Mobile and as consultant for ACTC, it's  
12 consistent with the type of arrangements we have  
13 negotiated with RSA owners in Metro-Mobile's  
14 tenure and also with ACTC as we negotiated  
15 agreements for management services with two  
16 companies there.

17 Q. Can you describe basically what that  
18 management arrangement is?

19 A. Yes. I guess, to put it in as few  
20 words as possible, you are trying to establish a  
21 relationship between the licensee and the owner,  
22 which has the licensee -- I'm sorry, the licensee  
23 and the manager, which has the manager assuming  
24 responsibility for implementation and day-to-day  
25 operations of the network; while at the same time

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1 not giving up authority, from the owner's  
2 standpoint, over the network, over the license.

3 That will include areas of engineering,  
4 design, implementation, financial, marketing and  
5 various administrative issues on a day-to-day  
6 basis.

7 Q. So how does the owner/licensee maintain  
8 authority or control over those issues while  
9 still delegating some responsibility?

10 A. In my experience it has started with  
11 the development of a business plan or case  
12 surrounding the property in question, to look at  
13 the type of market opportunity that exists, the  
14 economics and demographics of a particular  
15 market, looking at the type of network that might  
16 be best suited both economically and technically  
17 to achieve that, and then roll of data in a  
18 formal business plan that can be reviewed and  
19 approved and evaluated over time.

20 Q. And when you say a "formal business  
21 plan," is other name for that a budget?

22 A. Correct.

23 Q. Based on your review of the deposition  
24 transcripts and your discussions with David  
25 Lokting and Ellis Thompson, are you aware that at

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1 the outset the Ellis Thompson Corporation chose  
2 to use Motorola equipment in the Atlantic City  
3 system?

4 A. Yes.

5 Q. And do you recall that there was  
6 testimony that they wanted it to be compatible or  
7 an integrated system?

8 A. Yes, I did.

9 Q. Can you explain to us why -- well,  
10 first, was it typical in that time frame to use  
11 similar equipment with adjoining areas?

12 A. In the early days of cellular, in order  
13 to have maximum coverage for signal and maximum  
14 usability of your -- for your customers, it was a  
15 common practice to try and affiliate yourselves  
16 in adjacent markets with common equipment. At  
17 that time there were no technology standards that  
18 allowed incompatible equipment to be used in  
19 different markets.

20 Q. So in other words, by using the same  
21 equipment, you provided a larger area where your  
22 customers could use their cellular telephones  
23 without losing their calls?

24 A. That's correct. It affected them in a  
25 positive way, in that call delivery and call

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1     handoff capabilities existed across the  
2     theoretical borders between MSAs and RSAs and  
3     gave a more useful product, user-friendly product  
4     to the marketplace.

5           Q.     So by providing a more user-friendly  
6     product there was a marketing advantage to have  
7     such a system?

8           A.     It certainly was one of the advantages,  
9     yes.

10          Q.     Were you aware that, based on your  
11     review of the transcripts and your meetings, that  
12     the Ellis Thompson Corporation purchases  
13     switching services from Amcell/Comcast?

14          A.     Yes.

15          Q.     Is that a typical thing that you see in  
16     the industry?

17          A.     Again, in that day, it was driven  
18     mostly by the economics of the situation. It was  
19     not uncommon to see switch sharing agreements  
20     develop as opposed to looking at discrete  
21     investments and switches and all of the attendant  
22     costs that come along with it from a manpower and  
23     physical plant standpoint.

24          Q.     Also, at some point in time you may  
25     recall that the -- I guess I would call them

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1 office operations of the Atlantic City system  
2 were consolidated in a Wilmington office and the  
3 costs were -- of those services were allocated  
4 between Comcast, other operations at Wilmington,  
5 and the Ellis Thompson Corporation's Atlantic  
6 City operations?

7 A. Yes.

8 Q. Do you recall that?

9 A. I reviewed some documents that talked  
10 about the cost allocations and the consolidation.

11 Q. Is that something unusual in the  
12 industry?

13 A. No. It was particularly used in the  
14 RSA environment in order to achieve the  
15 efficiencies and economies of scale that many of  
16 the markets demanded in order to be viable  
17 financially.

18 You would try not to sacrifice a  
19 marketing presence, so you would normally leave a  
20 sales or a retail type of facility in the market  
21 so that people had a source that they could go to  
22 for services. But the backroom operations and  
23 overhead operations, there was tremendous benefit  
24 economically, for consolidation.

25 Q. Now, during the depositions of various

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1 people, some questions were asked about the  
2 access Ellis Thompson has, or Ellis Thompson  
3 Corporation has, to the facilities and equipment.

4 Based on your experience is  
5 Mr. Thompson's access in any way different than  
6 the access of any president of a corporation that  
7 owns cellular facilities?

8 A. Not really. The requirement that the  
9 manager and/or owner of any of these properties  
10 has is to maintain a high level of security  
11 against a break-in into a cell site or entrance  
12 into a switching.

13 So Mr. Thompson had access to all of  
14 those facilities at his request, and I believe  
15 through discussion, with the proper people going  
16 with him from Amcell and Comcast.

17 Frankly, that's no different than I,  
18 working at Metro-Mobile ever had. As the  
19 vice president of operations, I would not want my  
20 people to leave open access to such a secure area  
21 as a switch environment, given the nature of that  
22 as sort of the heart of a network, and given the  
23 remote nature of cell sites, security is required  
24 there. So giving out codes or keys or things  
25 like that just complicates the security program.

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1 But the fact that one can go to a  
2 central point and achieve access with the proper  
3 notification to those facilities, protects the  
4 licensee and the assets that he's investing, it  
5 protects the business and the revenue stream and  
6 the fixed assets. I think it's common with what  
7 I have seen and experienced.

8 Q. Earlier you were describing how the  
9 systems are managed, or the management is  
10 supervised by the owner/licensee by a business  
11 plan or a budget.

12 Are the types of decisions that Ellis  
13 Thompson was asked to make as the owner/licensee,  
14 typical of those that you would ask an  
15 owner/licensee in other cellular systems?

16 A. I think the way the partnership and the  
17 Ellis Thompson Corporation interfaced with the  
18 management firm, it's consistent with the RSAs  
19 that we had managed at Metro-Mobile, either in a  
20 turnkey scenario or in a management scenario, and  
21 also, frankly, in the way that we would interface  
22 with our own general managers out there.

23 Q. Now, you may recall from the deposition  
24 transcripts and your discussions, that the Ellis  
25 Thompson Corporation has no employees. Did you

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1 find that unusual?

2 A. No. Most of the partnerships or other  
3 types of legal entities that were formed to  
4 acquire licenses very seldom had employees.  
5 Normally they would -- again, to enjoy the  
6 efficiencies or economies of scale, use the  
7 employees of the management firm and achieve the  
8 results they wanted through that.

9 Q. The Ellis Thompson Corporation had its  
10 financing through a Provident loan and there were  
11 some questions earlier on about that loan. I  
12 guess before I get to that, based on your  
13 experience at Metro-Mobile, were you ever in a  
14 situation where you were managing someone else's  
15 system, but yet you had an option or purchase  
16 agreement or some type of future interest in that  
17 license?

18 A. Yes. We had a number of RSAs which  
19 were integral to our strategic planning to fill  
20 out our clusters in the various areas that we had  
21 MSA properties. The strategy basically assumed a  
22 direction which had us trying to acquire the  
23 management contract for certain RSAs with options  
24 and/or opportunities to purchase those RSAs in  
25 the future.

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1 Q. Based on your experience, was it  
2 typical for a manager in those types of  
3 situations to pay money for that option?

4 A. In some cases, there were option  
5 amounts established in exchange for advance and  
6 in some cases there were not. But it's not an  
7 uncommon approach.

8 Q. Going back to the Provident loan issue,  
9 there's been testimony that Comcast introduced  
10 Ellis Thompson Corporation to the Provident loan.  
11 Is that something unusual, based on your  
12 experience?

13 A. Again, based on what the RSA licensees  
14 were looking to get, I believe, from a  
15 relationship with a management firm, was  
16 opportunities to enjoy better buying power in  
17 association with manufacturers of network  
18 equipment; and also, access in some fashion to,  
19 or direction to banks, given the expertise that  
20 would come along with the management firm. So  
21 it's not that uncommon. The choices were rather  
22 few. It was either vendor financing or a  
23 third-party bank.

24 Q. Now, as part of the loan agreements the  
25 lender required that a competent management

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1 company be in place. Is that unusual in the  
2 industry?

3 A. No. It's not only, I don't think  
4 unusual in the industry, it's general practice in  
5 most cases where the owners don't have the  
6 particular expertise at that point in time and  
7 the banks look to have some expertise brought in  
8 to support the viability of the loan and the  
9 ongoing capability of the business to repay the  
10 loan.

11 Q. I want to move on to another area about  
12 profitability, but it's kind of a related issue.  
13 Is it typical in your experience that the lender  
14 will have a provision in the loan documents  
15 providing that it has to approve any distribution  
16 of profits before they are made?

17 A. In most of the financing agreements  
18 that I have either been aware of or been party  
19 to, financing institutions -- whether they be  
20 banks, whether they be vendors or manufacturers  
21 doing it -- require the operations to adhere to a  
22 certain set of terms and conditions.

23 Those could be operating ratios as to  
24 the debt equity that the business must maintain,  
25 the growth rate in terms of revenues and

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1     profitability from an operating standpoint,  
2     and/or whether funds can be distributed should  
3     they be available prior to paying back other  
4     loans or buying down other loans.

5             So it's not inconsistent with a lender,  
6     not just in cellular but in other businesses,  
7     that they put those conditions upon the -- the  
8     businesses.

9             Q.     There was testimony you may have read,  
10    by Mr. Thompson and others, that he had  
11    reinvested the profits in the -- into the  
12    business. Is that unusual, in your experience?

13            A.     Well, most people would like to take as  
14    much of the profit out. I think in the RSAs, in  
15    order to void incurring additional debt and  
16    looking at establishing a negative on an ultimate  
17    sale transaction, most would try and plow back in  
18    any available cash to defer any debt that had to  
19    be taken on to expand the network or to supply  
20    operating.

21            Q.     Based on your experience, do you  
22    believe that the Ellis Thompson Corporation and  
23    Mr. Thompson reserved controls similar to those  
24    seen in other systems?

25            A.     Yes. I think what he had -- what he

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1 had set in place and the relationship between he  
2 and the management, and he was consistent with  
3 what have been required to avoid any transfer of  
4 control issues established by the FCC and -- and  
5 good business dictates.

6 Q. Are you generally familiar with the  
7 transfer of control issues fostered by the FCC?

8 A. Reasonably so.

9 Q. And based on your experience, do you  
10 think that control has been transferred under  
11 those standards as set forth by the FCC?

12 A. No, I do not. I believe that he has  
13 honored the agreement.

14 MR. LARSON: I have nothing further at  
15 this time.

16 EXAMINATION BY COUNSEL FOR  
17 WIRELESS TELECOMMUNICATIONS BUREAU OF THE FCC  
18 BY MR. WEBER:

19 Q. Good morning, Mr. Riley. My name is  
20 Joseph Weber. I represent the Wireless  
21 Telecommunications Bureau of the FCC.

22 You mentioned that at one point in your  
23 career you did work for Comcast?

24 A. Yes.

25 Q. When did you leave Comcast?

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1           A.     I worked for them for a period of about  
2     six months in 1992 from April of '92 to, I  
3     believe, September of '92.

4           Q.     During your time with Comcast, did you  
5     ever have any work which in any way related to  
6     the Atlantic City system?

7           A.     No.

8           Q.     Were you aware at that time that  
9     Comcast was managing the Atlantic City system?

10          A.     Yes.

11          Q.     You mentioned also that you were  
12     retained by the Ellis Thompson Corporation. Did  
13     you have any contact with Comcast about being  
14     retained as an expert witness?

15          A.     No, I didn't.

16          Q.     What is your expert witness fee?

17          A.     I charge \$500 a day.

18          Q.     Have you testified as an expert  
19     previously?

20          A.     Without fees, yes.

21          Q.     Have you testified as an expert in  
22     cases as it relates to transfers of control?

23          A.     Not on specific transfer of control  
24     cases.

25          Q.     Well, what type of cases have you

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1 testified in as an expert previously?

2 A. The cases that I was involved in dealt  
3 with the licenses and the viability of businesses  
4 and some roaming conditions that were in question  
5 between various RSA management companies and  
6 ourselves, Metro-Mobile, as an MSA operator.

7 Q. You mentioned that you spoke with  
8 Mr. Lokting and Mr. Thompson previously to  
9 testifying today. Did you speak with anybody at  
10 Comcast?

11 A. No.

12 Q. There were some discussion about, that  
13 you are somewhat familiar with FCC regulations as  
14 they relate to control and ownership. Have you  
15 actually reviewed any of the FCC ownership  
16 decisions?

17 A. I believe as a part of one of the  
18 agreements in dispositions -- depositions that I  
19 read, the Star-TDS case was written up in there.  
20 So I have read that.

21 Q. Have you ever read the Bryant O'Neil  
22 decision?

23 A. No, I have not.

24 Q. How do the think that the instant  
25 situation compares to the Star situation?

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1           A.     I don't believe that it really  
2 compares. I think what has transpired here is a  
3 conventional, rather standard or normal process  
4 that existed between RSA and various RSA  
5 management companies or MSA companies as they  
6 undertook the management of RSAs. It's rather  
7 straightforward in how it was put together and  
8 the types of controls that were in place to  
9 ensure Mr. Thompson's involvement in the  
10 decision-making process.

11           Q.     Now, Comcast owns a cluster of systems  
12 around the New Jersey system, correct?

13           A.     That's my understanding, yes.

14           Q.     In your experience, is it at all common  
15 for a manager of one system to also own -- to  
16 actually own a number of systems around that  
17 system which it manages?

18           A.     It's not uncommon. My personal  
19 experience with Metro-Mobile is that there were  
20 strategies in place to accomplish that, given the  
21 relationship, either demographically or  
22 economically, RSAs to MSAs. It certainly was  
23 reasonable to look at the MSAs as viable managers  
24 for some of the RSAs and to take them under the  
25 wing, so to speak, and create both a marketing

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1 image, if you will, for that RSA involved with  
2 it, and to enjoy for the RSA end itself some  
3 efficiencies and economies of scale that it  
4 otherwise wouldn't have gained.

5 Q. So you're saying that it actually can  
6 help benefit the licensee as opposed to  
7 benefiting the manager?

8 A. That's correct.

9 Q. In your review of the Atlantic City  
10 management, did you ever find instances where  
11 Comcast recommended or took action -- recommended  
12 to take actions or actually took actions in the  
13 Atlantic City system which was more for the  
14 benefit of their surrounding systems?

15 A. No.

16 Q. Did you review any of the roaming  
17 contracts?

18 A. I did not review the specific roaming  
19 contracts, but in general I had discussions with  
20 regards to how roaming would be accomplished and  
21 how it would be handled in the context of the  
22 management agreement, the financial aspects of  
23 the management agreement.

24 Q. Do you know if the Atlantic City system  
25 gives favorable roaming rates to the Comcast

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1 systems?

2 A. I do not have any specific knowledge on  
3 the rates between the two. I think the knowledge  
4 that I gained from reading the documents talked  
5 about the use of the standard CTIA acknowledged  
6 roaming agreement and the various rates that are  
7 negotiated between the properties to establish  
8 the right financial relationship.

9 It would appear to me, from discussions  
10 with both Ellis Thompson and David Lokting, that  
11 the financial relationship and the roaming rates,  
12 or the financial relationship that grew out of  
13 roaming rates was beneficial to Ellis Thompson  
14 Corporation and its operation of the Atlantic  
15 City network.

16 Q. Do you know if Comcast has one person  
17 whose sole responsibility is to manage the  
18 Atlantic City system?

19 A. Again, reviewing some of the documents,  
20 it would appear to me from an operating  
21 standpoint, day-to-day operations, that the  
22 Wilmington office had responsibility to manage  
23 the Atlantic City business from a marketing and  
24 administrative area. The engineering, I think,  
25 was always with Comcast, consolidated with a

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1 corporate function. And likewise, the pure  
2 financial was always consolidated at a corporate  
3 function.

4 Q. How common is this consolidation in a  
5 management agreement?

6 A. Fairly common. Again, the objective is  
7 to try and gain as much economies and  
8 efficiencies as you can and utilize people to  
9 their fullest extent. With the exception of pure  
10 salespeople, who are different by unit sales and  
11 things like that, overhead is best applied where  
12 it can be fully utilized and fully efficient.  
13 From my standpoint, both Metro-Mobile -- and  
14 since then, have tried to work in that -- in that  
15 area.

16 Q. Does it have any effect over the  
17 control the owner has if the owner does not like  
18 the work that one of the managers is doing, if  
19 that manager's work is also consolidated with  
20 other systems?

21 A. I think to the extent that the proper  
22 controls have been set up and advanced via how a  
23 business is to be structured financially and how  
24 the network is designed and how it's going to be  
25 operated, what objectives are in mind; no, it

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1 doesn't challenge it.

2 The owner is able to, via that  
3 mechanism, effect anything they need to, either  
4 on a day-to-day basis or on an organizational or  
5 operational basis. But it doesn't -- there is no  
6 benefit necessarily to having immediate access to  
7 an individual to accomplish change.

8 Q. Did you review the check writing policy  
9 for the Atlantic City system?

10 A. Yes.

11 Q. How standard is that policy?

12 A. Actually, I would say there's is a bit  
13 more difficult than most. Given the logistics in  
14 place, they have taken an extra measure of, I  
15 guess, due diligence, if you will, to make sure  
16 that Mr. Thompson is able not only just to see  
17 and advance some of the expenditures, but also  
18 review, along with the right detail, any checks  
19 over a certain amount. In many cases, you would  
20 find those amounts not so small as those which  
21 Mr. Thompson set up with Comcast.

22 Q. Are you saying that you've seen systems  
23 where the licensee or the owner does not actually  
24 have to sign checks if he's approved of the  
25 budget?

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1           A.    No.  They have the -- they have a need  
2   to sign the checks, but the amounts are at higher  
3   levels, given that some of the normal recurring  
4   expenditures, as these businesses mature, can be  
5   over the \$5,000 limit as was established in the  
6   contracts.

7                   I believe also, from some review, that  
8   they have adjusted some of that through the  
9   history as well, recognizing that the amounts  
10  could grow larger.

11                  But again, they're approved  
12  expenditures within the context of the budget or  
13  business plan, and they're recurring in nature.  
14  So having a different approval process in order  
15  to allow expeditious treatment of that is not  
16  inconsistent with what I've seen in good business  
17  practice in the cellular business before.

18           Q.    Did you review what steps have to be  
19  taken in order for additional cells to be built  
20  in the system?

21           A.    I've reviewed some of the requests  
22  proposed and the process that they went through  
23  in order to look at expanding networks.

24           Q.    And how does the process in the  
25  Atlantic City system compare to other



1 management's managed systems?

2 A. Fairly consistent. Again, it's driven  
3 by the management firm assessing what is required  
4 to expand the network from a capacity standpoint  
5 and/or a footprint standpoint, in order to  
6 maintain competitive parity or create a  
7 competitive advantage from the marketing side.

8 But all of that is driven by the  
9 economics and whether or not the business can  
10 afford it, whether or not the owners would incur  
11 debt or be willing to put in equity. So all of  
12 those aspects come into play in making a decision  
13 whether one can build out a network, leave it as  
14 it is, whether one would buy equipment, lease  
15 equipment, rent sites or purchase sites.

16 It seems that all of those processes  
17 are certainly under the control of Mr. Thompson  
18 and in some respects he has affected them  
19 adversely, given the recommendations of  
20 management. He has not always just necessarily  
21 signed up for what their recommendations were.

22 Q. And it's because he hasn't always just  
23 signed up for what they've recommended which has  
24 led you to believe that he has shown control?

25 A. I think the fact that he has reviewed

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